Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

FEI JIANG,

Petitioner,

v.

UNITED STATES ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The United States Court of Appeals for the Second Circuit has held in the captioned matter that an asylum applicant, here the petitioner, must demonstrate that his fear of persecution on account of his opposition to public election fraud has been manifestly "directed toward a government institution" as opposed to "merely against individuals whose corruption was aberrational" for the purpose of meeting his burden of proving a well-founded fear of persecution on account of political opinion. This holding raises two important legal questions regarding the burden of proof which an asylum applicant must meet in establishing a well-founded fear of persecution on account of an actual and/or imputed political opinion that warrant immediate review by this Court in light of different standards of proof as applied in the Second Circuit in the captioned matter as opposed to those applicable in the Ninth Circuit:

1. Whether a proper assessment of the credibility of an asylum applicant who claims a well-founded fear of persecution on account of opposition to public election fraud can be bifurcated from a determination of whether the applicant's said fear qualifies for fear of persecution on account of political opinion under INA; and

2. Whether the applicant's fear of persecution on account of his political opinion may be established by his actual and imputed opposition to public election fraud as a form of government corruption on basis of direct as well as circumstantial evidence indicating

QUESTIONS PRESENTED – Continued

that government action taken against the applicant in the form of attempted police arrest could not have been initiated for any legitimate prosecutorial purpose, whether or not the applicant's opposition to such government corruption was perceived as towards the government as an institution or merely towards "individuals whose corruption was aberrational", regardless of the applicant's own intent.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Second Circuit.

The petitioner here and petitioner below are Fei Jiang.

The respondent here and respondent below are the United States Attorney General.

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The opinion of the Court of Appeals for the Second Circuit in this matter as issued in the form of a summary order as filed on November 9, 2005, has not been reported in the Federal Reporter per order of the Second Circuit. Neither has the opinion of the Board of Immigration Appeals whose agency decision was the subject of the underlying petition for review before the Second Circuit been published in any media. The decision of the immigration judge presiding over the petitioner's removal proceedings was likewise unpublished.

JURISDICTION

The Court of Appeals for the Second Circuit entered its summary order on November 9, 2005. This Court has jurisdiction under 28 U.S.C., Section 1254(1).

STATUTES INVOLVED

This case involves provisions of the Immigration and Nationality Act reflecting Amendments by IIRARIA (Pub. L. 104-208, 110 Sta. 3009 (September 30, 1996), Section 101(a)(42) (8 U.S.C., Section 1101(a)).

STATEMENT OF THE CASE

This is a case whose review by this Court can resolve persistent conflicts between the Second Circuit and the Ninth Circuit, and hence potentially between and among other circuits as well, on the important issue of the standard

for assessing the meeting of burden of proof by an asylum applicant for establishing a well-founded fear of persecution on account of political opinion as perceived and hence imputed by the asylum applicant's persecuting government as based on both direct and circumstantial evidence, regardless of that applicant's actual intent. It further raises the critical issue of the role of credibility determination in making a fair and balanced assessment on the issue of burden of proof by such an applicant.

Fei Jiang, the petitioner in the caption matter, petitioned the United States Court of Appeals for the Second Circuit ("Second Circuit") for review of a decision of the Board of Immigration Appeals ("BIA") summarily dismissing his appeal from the decision of an immigration judge below ("IJ") who denied the petitioner the relief of asylum being sought on account of his opposition to fraud committed in a public election by a township government in Fujian Province of China, where Jiang originated.

In denying the underlying petition for review, the Second Circuit declined to address the critical issue of the IJ's erroneous adverse credibility finding and narrowly focused on the legal definition of what constitutes political opinion for the purpose of the meeting of burden of proving a well-founded fear of persecution by an asylum applicant on account of one of the grounds enumerated in the Immigration and Nationality Act ("INA"), Section 101(a)(42)(A), 8 U.S.C., Section 1101(a)(42)(A). In doing so, the Second Circuit improperly bifurcated the issue of credibility determination from the issue of the meeting of burden of proof by an asylum applicant as if they were analytically unrelated, thus rendering an asylum applicant's credible testimony meaningless in meeting his burden of proof in seeking the relief of asylum.

Review is therefore urgently needed not only to resolve the conflict between the Second Circuit and the Ninth Circuit on the issue of the evidentiary weight to be assigned to the credible testimony of an asylum applicant in assessing the well-foundedness of the applicant's fear of persecution on account of his political opinion, whether that opinion is actually held or imputed, but also to resolve the issue of what constitutes political opinion under INA, Section 101(a)(42)(A) in the context of imputed opposition to government corruption in the form of public election fraud, regardless of the applicant's actual political view being expressly manifested or not.

A. Factual Background

The petitioner is a citizen and national of the People's Republic of China, who last entered the United States as an arriving alien on September 9, 2000. See Joint Appendix before the Second Circuit ("JA"), at 295.

Thereafter, the petitioner filed a defensive application for asylum in his removal proceedings in immigration court and filed corroborating documents in support of his asylum claim. Pet. App., at 18a-27a. Further, on February 8, 2002, the petitioner testified before the IJ as his own witness. JA, at 52-89.

According to his written application and testimony as corroborated by his eleven supporting documents (JA, at 135), while in China the petitioner, who graduated from senior high school, volunteered twice as election worker for village chief elections in his home area, the second occasion being in September, 1999. Id., at 62.

For the purpose of the 1999 village election, two candidates were on the ballot, namely, Jiang Aitun ("Jiang") and Chen Aitun ("Chen"). JA, at 64, 65, 165 and 24.

Together with a second volunteer election worker by the name of Ai-Lin Jiang in his 60s, the petitioner devoted his time to distributing election ballots to eligible village voters and then collected and tallied them after they had been cast on September 23, 1999. JA, at 63, 68, 73, 165 and 264. Out of a total of some 5,000 ballots that were collected, more than 3,000 went to Jiang, and fewer than 1,700 to Chen. Id.

The cast ballots had been counted and tallied "in the presence of all" and sealed and handed over to the township chief, who was present on the scene to supervise the election. Id., at 65-66, 165, and 264.

The following day, on September 24, 1999, a notice of the purported election result was posted in the village announcing to the effect that Chen, who was the incumbent village chief, had been reelected for another four years. JA, at 66, 78 and 264.

Suspecting an error, the petitioner attempted to speak to the township chief about the erroneous election result in order to seek correction thereof. JA, at 264. Instead of being received by the township chief, the petitioner was warned by the chief's deputy not to spread any "rumor". Id.

Having consulted with his co-election worker Ai-Lin Jiang, the petitioner eventually drafted a public statement signed by both, which declared that the true winner of the village election as tallied on September 23, 1999, was Jiang, not Chen. JA, at 71-72. The petitioner and his co-election

worker affixed their names onto the public announcement in order to lend credence thereto. Id.

The petitioner and Ai-Lin Jiang then went into hiding in order to avoid expected adverse consequences, although the petitioner's testimony did not specify what consequences he and his co-election worker were fearful of at the time. JA, at 71-72.

As the petitioner had feared, police later came to his home on October 1, 1999, "trying to arrest" him. JA, at 69-70 and 265. The petitioner, who received this information from his mother, further learned that Ai-Lin Jiang had already been arrested by police. Id.

As of his merits hearing held on February 8, 2002, the petitioner's former co-election worker remained in prison serving an extended one-year sentence. JA, at 73 and 173.

B. The Petitioner's Evidentiary Corroboration and Testimony

The petitioner's evidentiary corroboration consisted of eleven documents, of which seven were directly related to the petitioner, while the other four were background documents (JA, at 135 and 182), inclusive of the following documents:

1) A Chinese identity card for the petitioner (JA, at 137-138);

2) A household register for the petitioner and his family (id., at 140-155);

3) An identity card for the petitioner issued by Langqi Township of Fuzhou City for Term Change Election in 1999) (id., at 157-158);

4) A diploma for the petitioner's graduation from Langqi Middle School of Fuzhou City (id., at 161-162);

5) A supporting statement from Jiang Ai-Lin with copy of the drafter's identity card and the transmittal envelope (id., at 164-170);

6) A second supporting statement from Jiang Ai-Lin with the transmittal envelope (id., at 172-175);

7) A third supporting statement from Jiang Ai-Lin with the transmittal envelope (id., at 177-181);

8) An excerpt from Amnesty International Report 1999 (id., at 182 and 184-186);

9) *China (Includes Hong Kong and Macau) – Country Reports on Human Rights Practices – 2000* (id., at 188-246);

10) *China jails youth for corruption letter – HK group* from Reuters (01/07/2000) (id., at 248);

11) *ANALYSIS – China graft witchunt wont's purge party's demons* from Reuters (04/21/2000) (id., at 250-251);

12) *Anti-corruption activist jailed* from Reuters (04/19/2000). Id., at 253-254.

The petitioner's testimony was largely in conformity with his written application and supporting documents, as reflected in no reference in the IJ's findings of fact to any inconsistency or omission central to his asylum claim[1]. Pet. App., at 13a-14a.

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[1] As discussed below, the IJ's references to "minor inconsistencies" were not supported by substantial evidence in the record of proceedings.

C. Proceedings Below

On February 8, 2002, the IJ denied relief on four grounds (Pet. App., at 11a-15a), namely (1) the petitioner's alleged failure to meet his burden of proof for lack of (i) police summons or arrest warrant against the petitioner, (ii) documents showing the imprisonment of the petitioner's former co-election worker "for the same problem", and (iii) statements from the petitioner's family members in support of his asylum claim; (2) no "sufficient and convincing evidence" showing the petitioner was valid "nationwide" in China[2]; (3) lack of credibility as allegedly based on three "minor inconsistencies" and one instance of implausibility; and (4) "option for internal relocation".

On September 4, 2003, the IJ's decision was affirmed by the BIA without opinion. Pet. App., at 5a.

On appeal to the Second Circuit, the petitioner's application for reversal of the BIA summary dismissal was denied on November 9, 2005. Pet. App., at 1a-3a.

In denying the petitioner's appeal, the Second Circuit first found no factual basis in support of the petitioner's claim that his fear of persecution was on one of the enumerated grounds protected by INA.

Citing its opinion in Yueqing Zhang v. Gonzales, No. 02-4533, 2005 WL 2562630, at *1 (2d Cir. Oct. 13, 2005), the Second Circuit found the petitioner's fear of

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[2] Only parenthetically under this second ground for denial of relief did the IJ note that "[the petitioner] has not demonstrated that the police are seeking him out to persecution for him any characteristic or belief that he had, other than exposing election fraud". Pet. App., at 12a.

persecution on account of his opposition to public election fraud did not qualify as fear of persecution on account of political opinion and surmised that the petitioner's reference in his written application to his being "offended" by the election fraud and his "thinking that 'those officials were cheating village people'" "suggests that he expected redress from within the hierarchy and therefore he was opposing corruption he regarded as 'aberrational'". Pet. App., at 2a.

On basis of this finding, the Second Circuit denied the petition for review and declined to reach the issue of the petitioner's "challenge to the IJ's alternative holdings regarding [his] credibility and the possibility of internal relocation". Pet. App., at 3a.

REASONS FOR GRANTING THE PETITION

This case presents an important question of law concerning the standard for assessing the meeting of burden of proof by an asylum applicant where determination of the applicant's credibility should be resolved as *a threshold issue* instead of a secondary issue or non-issue, where as here the finder of fact, namely an IJ, has reached a clearly erroneous adverse finding and hence reversal of that erroneous finding would as a matter of law provide sufficient factual and legal basis for finding a well-founded fear of persecution on account of one of the enumerated grounds protected by INA given the evidentiary weight to which the applicant's testimony is then entitled.

This case further presents an important question of law as to what constitutes political opinion in the context of an applicant's imputed opposition to public election

fraud as a form of government corruption in view of sufficient evidence, both direct and circumstantial, that the opposition is perceived in part by that government as towards the government as an institution.

Last and most importantly, this Court's review of the captioned matter is urgently needed in light of the Second Circuit's holding in the captioned matter, though unpublished, constitutes a clear conflict with holdings on these issues in published opinions of the Ninth Circuit with respect to the evidentiary weight that should be assigned to the testimony of an asylum applicant, here the petitioner, where such weight has clear impact on the issue of determination of burden of proof. Thus, review of the captioned matter would not only resolve the conflict between these two circuits but could also set forth clearer guidance for future cases in other circuits as well.

I. CREDIBILITY DETERMINATION CANNOT BE BIFURCATED FROM DETERMINATION OF THE ON-ACCOUNT-OF ISSUE WITHOUT ASSUMING CREDIBILITY WHERE A FACT FINDER'S ADVERSE CREDIBILITY FINDING IS CLEARLY ERRONEOUS AND SHOULD BE REVERSED AS A MATTER OF LAW.

It is well settled that an asylum applicant's credibility is a threshold issue whose resolution in disfavor of the applicant may suffice without more as basis for denying relief. On the other hand, an asylum applicant's testimony, "if credible in light of general conditions in the applicant's country of nationality * * * may be sufficient to sustain the burden of proof without corroboration." 8 C.F.R., Section 208.13(a); see also Fasseha v. INS, No. 98-9537 (10th Cir.

1999) (citing Bolanos-Hernandez v. INS, 767 F.2d 1277, 1285 (9th Cir. 1985)).

In meeting an asylum applicant's burden of proving a well-founded fear of persecution, the applicant may through his credible testimony establish that he genuinely and hence subjectively fears harm. Singh v. Moschorak, 53 F.3d 1031, 1034 (9th Cir. 1995). Further, the objective prong of a well-founded fear may be satisfied "either through the production of specific documentary evidence or by credible and persuasive testimony". Ladha v. INS, 215 F.3d 889, 894 (9th Cir. 2000).

Here, the Second Circuit arbitrarily bifurcated the issue of credibility determination from the issue of determination of protected grounds as if analysis of the former would have no impact on the adjudication of the latter.

A. The Clearly Erroneous Adverse Credibility Finding of the IJ Is Subject to Reversal As a Matter of Law, and Hence Credibility Should Be Assumed in Adjudicating the Issue of Whether a Protected Ground Applies in This Matter.

As duly reflected in the record of proceedings, the IJ below reached an adverse credibility finding that is utterly devoid of any support of substantial evidence in the record. Pet. App., at 13a-14a.

With respect to the first of the three alleged "minor inconsistencies", the IJ's assertion of the petitioner's alleged testimony that he left China on "September 27, 2000" is flatly contradicted by the hearing transcripts which show that the petitioner stated in full conformity with his written application with respect to his date of

arrival in the United States as on September 7, 2000. JA, at 31. In fact, the petitioner was never questioned by anyone in court as to his date of departure from China.

The IJ's next reference to an alleged "minor inconsistency" concerns the petitioner omission of Taiwan from his written application as one of the "countries" which he traversed before reaching the United States. Pet. App., at 13a. It is beyond dispute that treating this omission from the written application as an inconsistency is both factually in plain error and analytically improper for assessing the petitioner's credibility. Factually, Taiwan is not treated as an independent country by the United States government, which solely recognizes the People's Republic of China as the one and only China and Taiwan as part of that China. See *Joint Communique of the United States of America and the People's Republic of China* (February 28, 1972). More importantly, even if treated as an inconsistency, the omission of Taiwan from the list of "countries" which the petitioner traveled through before reaching the United States would not affect a proper analysis of the petitioner's credibility for the obvious reason that Taiwan, whether technically a country, is not a factor anywhere in the petitioner's asylum claim.

The third and last alleged inconsistency on the IJ's list (Pet. App., at 13a-14a) is the IJ's assertion that a supporting statement from the petitioner's former co-election worker "happens to repeat the same information" as testified to by the petitioner in court at his individual hearing on February 8, 2002. Corroborating statements, even if "self-serving", do not per se make themselves suspect without more. Matter of S-M-J-, 21 I&N Dec. 722, 741 (BIA 1997). Hence, the IJ's assertion of an inconsistency in the given context is without merits.

The last component of the IJ's basis for reaching an adverse credibility finding in this matter is the IJ's conclusory disbelief without any basis in the record that the petitioner as high school graduate could not have been motivated to expose what the petitioner perceived as public election fraud unless, according to the IJ, he had had some prior experience of "involvement in any political organization or political group". Pet. App., at 14a. In doing so, the IJ took no administrative notice of any background information in or outside the scope of the record of proceedings and hence made the said assertion solely on basis of unfounded speculation as to the level of education requisite for political activism in the context of a village election in China.

The BIA "'must have a legitimate articulable basis to question the petitioner's credibility, and must offer a specific, cogent reason for any stated disbelief.'" Osorio v. INS, 99 F.3d 928, 931 (9th Cir. 1996) (quoting Hartooni v. INS, 21 F.3d 336, 342 (9th Cir. 1994)). Any such reason "'must be substantial and bear a legitimate nexus to the finding.'" Id. (quoting Mosa v. Rogers, 89 F.3d 601, 604 (9th Cir. 1996)).

An adverse credibility determination that is based on "speculation and conjecture" and is not supported by evidence in the record is reversible as a matter of law. Akinmade v. INS, 196 F.3d 951, 957 (9th Cir. 1999).

In light of the foregoing, the IJ's adverse credibility finding as affirmed by the BIA without opinion, was duly subject to review by the Second Circuit and was entitled to proper resolution in light of the critical importance of the credibility determination in the captioned matter.

Where as here the Second Circuit declined to address the credibility issue in this matter and proceeded to solely focus on the issue of protected grounds without assuming credibility, due process has been denied the petitioner given the net effect of leaving intact the IJ's clearly erroneous credibility finding and hence treating the petitioner's testimony as evidentiarily worthless in meeting his burden of proof.

In sharp contrast with the Second Circuit's ruling in this matter, under controlling case law in the Ninth Circuit, where as here the IJ's adverse credibility finding is clearly erroneous for lack of support of any substantial evidence in the record, the petitioner should be deemed a credible witness and his testimony should then be given full evidentiary weight in assessing his claim of a well-founded fear of persecution. Salaam v. INS, No. 98-71439, at (9th Cir. Oct. 18, 2000) ("Because the BIA's credibility determination 'rested on insufficient and impermissible grounds ... we deem [Salaam's] testimony credible.' Akinmade, 196 F.3d at 957-58. See also Shah v. INS, 220 F.3d 1062, 1072 (9th Cir. 2000).")

By declining to reach the credibility issue in this matter, the Second Circuit effectively affirmed the IJ's clearly erroneous adverse finding by adjudicating the issue of burden of proof without having to give any evidentiary weight to the petitioner's testimony.

B. Assuming Credibility in This Matter, the Petitioner Should Be Deemed to Have a Well-Founded Fear of Persecution on Account of His Political Opinion Where As Here There Is a Reasonable Possibility That the Petitioner Would Be Persecuted on Account of His Political Opinion.

Assuming credibility in this matter, the petitioner's fear of persecution is clearly well founded on account of his political opinion as expressed in his active opposition to public election fraud in general and the village election fraud in particular as perpetrated at two distinct levels of government.

The testimony of the petitioner as a credible witness should be given full evidentiary weight in assessing his asylum claim. Zhao v. Gonzales, 404 F.3d 295, 306 (5th Cir. 2005). Given full evidentiary weight, the petitioner's testimony should be deemed sufficient to establish the following factual allegations as corroborated by his supporting documents which have been duly admitted into evidence:

i) The petitioner's motivation to expose the village election fraud was based on his belief that the election should have been conducted in a transparent atmosphere to ensure that no one in the government at either village or township level should be allowed to "cheat" the village voters, where as here nowhere in the petitioner's written application or testimony did he indicate any personal vendetta against, or favoritism for, either candidate, Jiang or Che, or for that matter local governments at any level. JA, at 67 ("I felt that the [township] chief is not on the people['s side].")

ii) The petitioner's motivation to expose the village election fraud was further based on his belief that local officials at village and township levels had been involved in, and hence responsible for, the village election fraud, in light of the fact that the petitioner's efforts to request of the township government intervention to cure the election fraud were not only impeded but also openly discouraged. JA, at 67 ("In reply, [the township assistant chief] simply said (indiscernible), don't just let speaking garbage [sic].")

iii) The petitioner's efforts to expose the village election fraud was perceived by the local government as a form of criminal offense subject to police arrest and imprisonment, as has since happened to his former co-election worker Ai-Lian Jiang for signing the public expose of the election fraud in September, 1999, on basis of his and the petitioner's perception of the manipulated election as a result of "[t]he township government * * * cheating the people" (Pet. App., at 27a; see also JA, at 165 ("[The petitioner was] very angry, nevertheless. *The township government was cheating the electorate*, too. It was *a 'democratic' election in name only*." (emphasis added)) where as here there is sufficient circumstantial evidence indicating that the attempted police arrest of the petitioner in September, 1999, was at least in part motivated by the government's perception of the petitioner's act as a form of anti-government view expressed in his opposition to the election fraud. Gafoor v. INS, 231, F.3d 645 (9th Cir. 2000) ("*Persecutors do not always take the time to tell their victims all the reason they are being beaten or kidnapped or killed*. Sometimes, they may not want their motives known for fear of public condemnation; other times, the motives may be so

> clear to both parties that no explanation is needed." Id., at 650 (emphasis added).

The totality of the evidence, direct and circumstantial, in the record therefore warrants a finding that there is at least "a reasonable possibility" that the petitioner's feared persecution would be on account of his political opinion. Borja v. INS, 175 F.3d 732, 735 (9th Cir. 1999) (en banc); Singh v. Ilchert, 63 F.3d 1501, 1509 (9th Cir. 1995) (quoting Matter of R-, 20 I&N Dec. 621 (BIA 1992) ("The task of the alien is simply to demonstrate the reasonableness of a motivation which is related to one of the enumerated grounds"); Matter of Fuentes, 19 I&N Dec. 658, 660 (BIA 1988) (an applicant "bear[s] the burden of establishing facts on which a reasonable person would fear that the danger arises on account of his race, religion, nationality, membership in a particular social group or political opinion"); Matter of S-P-, 21 I&N Dec. 486, 489 (BIA 1996) ("An asylum applicant is not obliged to show conclusively why persecution occurred . . . [because s]uch a rigorous standard would largely render nugatory the Supreme Court's decision in INS v. Cardoza-Fonseca, 480 U.S. 421 (1987), and would be inconsistent with the 'well-founded fear' standard embodied in the 'refugee' definition . . . [Therefore,] the standard for review is whether the applicant has produced evidence form which it is reasonable to believe that the harm was motivated by a protected ground.").

C. The Conflict Between the Second Circuit and the Ninth Circuit in Applicable Standards for Assessing the Burden of Proof Is Sufficiently Great to Warrant Review by This Court.

The Second Circuit in this matter clearly applied a standard for assessing the burden of proof of the well-foundedness of an asylum applicant's fear of persecution in sharp and substantial conflict with those applied by the Ninth Circuit whereas here, the applicant's credibility should at least be assumed in light of the IJ's clearly erroneous adverse credibility finding, given the Second Circuit's unwillingness to address the credibility issue, which indicates that no evidentiary weight has been given to the petitioner's credible testimony in the Second Circuit's decision to deny the underlying petition for review, with clear prejudice to the petitioner's ability to meet his burden of proof.

Although the Second Circuit in this matter did not issue a precedent decision, its effect on similar cases is nonetheless profound. Although the Second Circuit purportedly relied on its precedent decision in the matter of Diallo v. INS, 232 F.3d 279, 287 (2d Cir. 2000) to justify denial of the underlying petition for review, the reliance was clearly misplaced for support of the court's application of its standard for assessing the well-foundedness of the petitioner's fear of persecution in this matter without properly addressing the evidentiary weight of the petitioner's credible testimony in the meeting of his burden of proof.

In doing so, the Second Circuit not only contravened the standard set forth in this Court's decision in INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992), which does not

require direct proof of the persecutor's motive and accepts circumstantial evidence for that purpose, but also applied standards sharply in conflict with those applied by the Ninth Circuit with respect to circumstantial proof of the persecutor's motives. Gafoor v. INS, 231 F.3d 645, 650 (9th Cir. 2000).

A persecutor's motive may be established by the absence of legitimate prosecutorial purpose where as in this case there is no evidence in the record that the attempted police arrest of the petitioner in September, 1999, and the actual arrest and imprisonment of his former co-election worker Ai-Lin Jiang around that time had resulted from any motive other than subjecting the petitioner and his former co-election worker to punishment for their public expose of the village election fraud to the detriment of the township government's reputation. Gafoor v. INS, 231 F.3d 645, 650-51 (9th Cir. 2000).

All that the petitioner and his partner did was to write down in their public expose what they as ballot collectors and counters had learned first-hand as to who the true winner at the village election was. JA, at 68-69 and 165. There is no indication from anything in the record that the petitioner and his partner had written anything down in their public announcement beyond the scope of what they knew to be true.

Given the positive credibility finding that should have been reached in this matter, the petitioner's testimony on this issue and hence his supporting documents, including three supporting statements from Ai-Lin Jiang, should receive full evidentiary weight with respect to the content of their public announcement and the circumstances in

which they made their decision to make that announcement.

The Second Circuit in this matter, purportedly relying on the holding of Diallo v. INS, supra, indicated that it would "not disturb a factual finding if it is supported by 'reasonable, substantial, and probative' evidence in the record when considered as a whole'". However, the entire "analysis" by the IJ on the issue of the burden of proof consisted solely of conclusory assertions to the effect that the petitioner failed to produce police summons and warrants and documents attesting to his former co-election worker's arrest and detention. There was no reference in the IJ's decision anywhere to whether the petitioner had ever been given an opportunity to explain absence of such documents, or for that matter, whether the petitioner's explanations, if any, should be deemed satisfactory, and, if not, why.

Here, by affirming the IJ's finding on the issue of burden of proof in the foregoing context, the Second Circuit precisely deviated from what Diallo v. INS stands for.

The holding of the Diallo court stands for the proposition that in assessing the meeting of the burden of proof an asylum applicant's credibility must be adjudicated and his explanation for lack of certain documentary proof duly taken into consideration and factored into determination of the issue of the meeting of the burden of proof. Hence, the Diallo court concluded that while lack of corroborating evidence can properly be considered in determining credibility, "corroboration cannot be the only factor taken into account because this would effectively require corroboration in all cases, contrary to explicit provisions in

the law that applicants may be able to rely exclusively on their testimony." Id.

Here, by the standard set forth by the Diallo court, the Second Circuit should have properly adjudicated the petitioner's challenge to the IJ's clearly erroneous adverse credibility finding as part of the court's analysis of the issue of burden of proof in this matter in light of the court's professed reliance on the holding of Diallo v. INS, and further in view of its rejection of controlling case law in the Ninth Circuit that requires no corroboration where an asylum applicant is deemed credible.

Hence, in the final analysis, both by deviating from its own holding in Diallo v. INS on the issue of the meeting of the burden of proof in light of certain missing documents, where as here the Second Circuit purportedly heavily relied on that precedent decision in denying the underlying petition for review, and further by declining to adopt the controlling case law in the Ninth Circuit which does not require corroboration in light of a positive credibility finding, the Second Circuit in this matter has failed to properly adjudicate the petitioner's application for review in a manner in conformity with due process, which requires either resolution of the credibility issue or assumption of credibility as a prerequisite for adjudicating the issue of the meeting of burden of proof.

By denying relief on the narrow ground of the petitioner's alleged failure to meet his burden of proof without properly addressing the credibility issue and hence assigning any due weight to the petitioner's consistent, specific, sufficiently detailed and hence credible testimony, the Second Circuit necessarily treated the petitioner's testimony

as without credibility, thus implicitly affirming the IJ's improper adverse credibility finding in this matter.

II. THE PETITIONER'S OPPOSITION TO PUBLIC ELECTION FRAUD AS A FORM OF GOVERNMENT CORRUPTION NEED NOT BE ARTICULATED AS OPPOSITION TO GOVERNMENT AS AN INSTITUTION WHERE AS HERE THE TOTALITY OF DIRECT AND CIRCUMSTANTIAL EVIDENCE IN THE RECORD SUFFICES TO MEET THE PETITIONER'S BURDEN OF PROVING A WELL-FOUNDED FEAR OF PERSECUTION ON ACCOUNT OF HIS POLITICAL OPINION.

The Second Circuit in declining to adjudicate the credibility issue in this matter reached the conclusion that the petitioner failed to meet his burden of proving a well-founded fear of persecution on account of his political opinion as a protected ground for his failure to have "belonged to no organization or political groups" and further for lack of "evidence that he was an adherent of either candidate." Pet. App., at 2a.

In reaching this finding, however, the Second Circuit not only arbitrarily bifurcated the credibility issue from the issue of the meeting of burden of proof but further erred in not recognizing imputed political opinion as a valid ground for seeking asylum.

A. The Second Circuit, in Clear Conflict with the Ninth Circuit, Improperly Bifurcated Determination of Credibility from Assessment of What Constituted Political Opinion in This Matter, Thus Leaving the IJ's Clearly Erroneous Adverse Credibility Finding Intact.

A proper assessment of an applicant's political opinion as gleaned from his testimony, written application and corroborating documents would necessarily have to proceed from proper resolution of the credibility issue. Without that predetermination, assessment of the applicant's political opinion would become baseless, for an incredible witness is not entitled to any evidentiary weight being assigned to his testimony or supporting materials for any purpose.

If found credible as the petitioner should have been, contrary to the IJ's clearly erroneous adverse finding, then the petitioner would be entitled to full evidentiary weight being assigned to his testimony and supporting documents, including three statements from Ai-Lin Jiang, with respect to the following factual allegations:

i) The petitioner was an election worker for the purpose of the Term Change Election in 1999 at which a village chief was to be elected from two candidates Jiang and Chen by eligible voters out of approximately 5,020 residents in Xinghui Village in Langqi Town of Fuzhou City. Pet. App., at 26a. and JA, at 157-158.

ii) For proof of his function as an election worker, the petitioner submitted his election worker ID as issued in 1999. JA, at 73 and 157-158.

iii) On September 23, 1999, with the petitioner and his co-election worker Ai-Lin Jiang acting as ballot distributors, collectors and then counters, 4,995 votes were cast, of which 3,315 went for Jiang and 1,680 for Chen, the incumbent village chief. Pet. App., at 26a; JA, at 64-65.

iv) The petitioner and Ai-Lin Jiang counted and tallied all the collected ballots "in the presence of all" and then sealed the result in an envelope and "presented it to the Township Chief", who was present on the scene to "overs[ee]" the election. Pet. App., at 26a; JA, at 65-66.

v) The election was meant to be a "democratic" process. JA, at 165.

vi) The following day, on September 25, a notice was posted at the village senior center to the effect that the incumbent village chief Chen had been reelected for another four years. Pet. App., at 26a.; JA, at 65-66 and 78.

vii) Suspecting an error, the petitioner approached the township government, where he asked to speak with the Township Chief but was received by "his deputy". Pet. App., at 27a; JA, at 65-66. The petitioner did so "[f]or the sake of *justice, democracy, and winning the people's confidence*". JA, at 165 (emphasis added).

viii) According to the deputy to the Township Chief, the posted result was "the correct result". Pet. App., at 26a; JA, at 66-67.

ix) Attempting to convince the deputy that Jiang should have been declared the winner at the village election, the petitioner was accused

of spreading "a rumor" and was told to "leave". Pet. App., at 26a; JA, at 67.

x) Later, believing that "*the township government was cheating the people*" and that the village election had failed to function as a "democratic" process, the petitioner discussed with Ai-Lin Jiang what he had discovered at the township government. JA, at 67-68 and 165 (emphasis added); see also Pet. App., at 27a.

xi) The petitioner and Ai-Lin Jiang then decided to "let the village people know the truth" about the result of the village election in order to "defend justice against the 'dark' election" (JA, at 173), and the petitioner personally "wrote the result of the election in a notice." Pet. App., at 27a; JA, at 165. The notice was drafted "on the night of September 25, 1999." Pet. App., at 27a; JA, at 68-69.

xii) "At around 1:00 a.m., the next morning, [Ai-Lin Jiang and the petitioner] secretly posted [the notice] to the bulletin board outside of the senior center." Pet. App., at 27a; JA, at 68. The two then "went into hiding". Pet. App., at 27a; JA, at 69. The petitioner did not return home because he believed that he would be "arrested". JA, at 69.

xiii) While concerned about adverse consequences that could follow his efforts to expose the election fraud, the petitioner deemed it imperative "to keep some evidence to the public that what was going on [sic]" and further found it necessary to affix his name on the notice in order to lend credence to its content. JA, at 72.

xiv) On October 1, 1999, while in Fuzhou, the petitioner learned from his mother that "five or six

police went to [his] home to arrest [him]." Pet. App., at 27a; JA, at 69-70. Further, according to the petitioner's mother, Ai-Lin Jiang had already been arrested. Id.

xv) Later, police "kept coming to [the petitioner's] home to arrest [him]." Pet. App., at 27a; JA, at 72.

xvi) The petitioner's parents were unable to submit their own supporting statements due to their illiteracy. JA, at 72. However, they visited Ai-Lin Jiang in prison, where they related information to Ai-Lin Jiang. Id.

xvii) The petitioner's parents were unable to draft a supporting statement due to their illiteracy. JA, at 72.

xviii) Ai-Lin Jiang was subsequently sentenced to one year in prison, which was further "extended" beyond the one-year period. JA, at 173. While imprisoned, Ai-Lin Jiang was "cruelly tortured" and felt "extremely weary". JA, at 173. He wrote from the prison to the petitioner three times. JA, at 73 and 164-181.

Where as here the Second Circuit allowed the IJ's clearly erroneous credibility finding stand by declining to address the credibility issue, thus leaving that erroneous finding tainting the petitioner's credibility, the issue of the meeting of burden of proof could not be fairly adjudicated, for all the foregoing factual allegations, which should have been found credible as corroborated by the petitioner's credible testimony and supporting documents, become worthless towards meeting the petitioner's burden of proof.

On the other hand, assuming credibility in this matter, there would be no basis for not finding a well-founded fear of persecution on account of the petitioner's political opinion, as clearly stated, inter alia, in the three statements from Ai-Lin Jiang to the effect that the petitioner and his former co-election worker had posted their public expose of the election fraud in order to ensure a true "democratic" election and to "defend justice" against the township government which was perceived as "cheating" the village people with clear prejudice to the supposedly democratic village election. For exposing this election fraud, Ai-Lin Jiang was sentenced to one year in jail with more time added to his sentence. What can be more politically motivated than exposing election fraud to ensure its supposedly democratic nature? What can be more politically prejudicial to a free society than defeating the very purpose of its public elections of government officials?

The Ninth Circuit has times and again emphasized the critical importance of a proper credibility determination by holding that unless there is an explicit adverse credibility finding by an IJ and where it is left undisturbed by the BIA, an asylum applicant's testimony should be accepted as truthful, for the simple and commonsensical reason that without resolving the credibility issue there would be no basis for adjudicating the issue of burden of proof. Kalubi v. Ashcroft, 364 F.3d 1134, 1137 (9th Cir. 2004); see also Maldonado-Cruz v. INS, 833 F.2d 788, 792 (9th Cir. 1989).

In light of the foregoing analysis, the Ninth Circuit's approach to the credibility issue clearly represents a much fairer and more balanced framework in which to reach a

reasoned conclusion with respect to the issue of the meeting of burden of proof by an asylum applicant.

B. The Second Circuit, in Clear Conflict with the Ninth Circuit, Improperly Failed to Recognize Imputed Political Opinion As a Valid Protected Ground for Seeking the Relief of Asylum.

The Second Circuit, in declining to find either imputed or actual political opinion as clearly exhibited in this matter by the petitioner in jointly posting an announcement of the truth about the actual winner at the village election, erroneously equated membership in a political organization or group as the only recognized form of expressing one's political opinion and hence further erroneously treated political opinion as incapable of being expressed except through an organizational forum.

It is well settled that an imputed political opinion qualifies an applicant for asylum where the applicant's fear of persecution as based on that imputed opinion is subjectively genuine and objectively reasonable. Sangha v. INS, 103 F.3d 1482, 1488-89 (9th Cir. 1992).

As held by the Ninth Circuit, political opinion, while encompassing electoral politics or formal political ideology or action, goes well beyond that scope. Borja v. INS, 175 F.3d 732 (9th Cir. 1999) (en banc) (refusal to pay "revolutionary taxes" to the NPA in the face of threats constitutes an expression of political belief) (citing Osorio v. INS, 18 F.3d 1017, 1028 (2d Cir. 1994) ("[t]he plain meaning of the phrase 'persecution on account of the victim's political opinion,' does not mean persecution solely on account of the victim's political opinion. That is, the conclusion that a

cause of persecution is economic does not necessarily imply that there cannot exist other causes of the persecution."); see also Al-Saher v. INS, 268 F.3d 1143, 1146 (9th Cir. 2001) (recognizing that an applicant's statements regarding the government political distribution of food in Iraq resulted in the imputation of an anti-government political opinion), amended by 335 F.3d 1140 (9th Cir. 2004).

By narrowly defining the expression of an asylum applicant's political opinion as solely possible through a political forum such as an organization or group, the Second Circuit in this matter improperly excluded imputed political opinions outside the scope of analysis on the issue of protected grounds *in clear conflict* not only with the Ninth Circuit but also with other circuits. See, e.g., Najjar v. Ashcroft, 257 F.3d 1262, 1289 (11th Cir. 2001); Morales v. INS, 208 F.3d 323, 331 (1st Cir. 2000); Lukwago v. INS, 329 F.3d 157, 177 (3d Cir. 2003); Ustyan v. Ashcroft, 367 F.3d 1215 (10th Cir. 2004).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

FEI JIANG, Petitioner
c/o 277 Broadway, Suite 1005
New York, NY 10007
(212) 406-0108

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 9th day of November, two thousand and five.

Present: HON. JON O. NEWMAN,
HON. RALPH K. WINTER,
HON. SONIA SOTOMAYOR,

Circuit Judges.

FEI JIANG,

Petitioner,

v.

No. 03-40515

UNITED STATES ATTORNEY GENERAL,

Respondent.

(Filed NOV. 09, 2005)

APPEARING FOR PETITIONER: GANG ZHOU,
New York, NY.

APPEARING FOR RESPONDENT KAREN J. KING, Assistant United States Attorney (Donald W. Washington, United States Attorney for the Western District of Louisiana, *on the brief*). Lafeyette, LA.

UPON DUE CONSIDERATION of this petition for review of the order of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

Petitioner Fei Jiang ("Jiang") petitions for review of a September 4, 2003 order of the BIA, affirming without opinion the result of a February 8, 2002 order of the Immigration Judge ("IJ") denying Jiang's application for asylum under 8 U.S.C. § 1158, statutory withholding of removal under 8 U.S.C. § 1231, and withholding of removal under the United Nations Convention Against Torture ("CAT") and its implementing regulations, 8 C.F.R. § 208.16(c). We assume the parties' familiarity with the facts and procedural history of the case.

Where, as here, the BIA summarily affirms the IJ's decision, we review the IJ's decision directly. *See Secaida-Rosales v. INS*, 331 F.3d 297, 305 (2d Cir. 2003). In reviewing an IJ's denial of an asylum application, we defer to the IJ's factual findings if they are supported by "substantial evidence." *Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003) (internal quotation marks and citation omitted); *see also* 8 U.S.C. § 1252(b)(4)(B). "Under this standard, we will not disturb a factual finding if it is

supported by 'reasonable, substantial, and probative' evidence in the record when considered as a whole." *Wu Biao Chen*, 344 F.3d at 275 (quoting *Diallo v. INS*, 232 F.3d 279, 287 (2d Cir. 2000)). This Court may reverse an IJ's determination that an applicant for asylum or withholding of removal has failed to satisfy the requisite burden of proof "only if no reasonable fact-finder could have failed to find the past persecution or fear of future persecution necessary to sustain the petitioner's burden." *Diallo*, 232 F.3d at 287.

Jiang's claims for relief were based on his attempts to call attention to the village leader's alleged fraud in altering the results of a local election in his own favor. Substantial evidence supported the IJ's finding that Jiang "has not demonstrated that the police are seeking him out to persecut[e] [him] for . . . any characteristic or belief that he had, other than exposing election fraud." While "retaliation for opposition to government corruption may, in appropriate circumstances, constitute persecution on account of political opinion," *Yueqing Zhang v. Gonzales*, No. 02-4533, 2005 WL 2562630, at *1 (2d Cir. Oct. 13, 2005), that opposition must be "directed toward a governing institution" and not merely "against individuals whose corruption was aberrational." *Id.* at *6 (internal quotation marks omitted). Jiang belonged to no organizations or political groups, and there is no evidence that he was an adherent of either candidate. In his affidavit, Jiang describes being "offended" and thinking that "those officials were cheating village people." The fact that Jiang went to the deputy to protest the fraud suggests that he expected redress from within the village hierarchy and therefore that he was opposing corruption he regarded as "aberrational." Nothing in the evidence compels the finding that

Jiang's alleged persecutors understood his opposition to extend beyond a desire to expose a single instance of corruption by the village chief. *See id.* at *3 ("[T]he focus of the statute is on the victim's opinion (and whether the persecution is visited by reason of that opinion)." (internal quotation marks omitted; alteration in original)). We therefore affirm the denial of asylum and statutory withholding of removal.[1] *See* 8 U.S.C. §§ 1101(a)(42), 1231(b)(3)(A). Jiang does not seek review of the denial of CAT relief.

For the foregoing reasons, the petition for review is DENIED.

FOR THE COURT:

ROSEANN B. MACKECHNIE,
CLERK

/s/ Lucille Carr
By:

[1] Because the IJ's holding that Zhang failed to meet his burden of showing persecution on account of a statutorily protected ground was sufficient to support the denial of these claims, we do not need to address Jiang's challenges to the IJ's alternative holdings regarding Jiang's credibility and the possibility of internal relocation.

U.S. Department of Justice
Executive Office for
Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A77-287-385 – NEW YORK Date: SEP. 4, 2003

In re: JIANG, FEI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: GANG-ZHOU

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

/s/ [Illegible]
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
New York, New York

File No.: A 77 287 358 February 8, 2002

In the Matter of	)	
JIANG, FEI	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act as amended, in that the respondent is an alien in the United States without being admitted or paroled or who has arrived in the United States at any time and place other than designated by the Attorney General.

APPLICATIONS: Political asylum, Section 208;

Withholding of removal, Section 241(b)(3); and

Withholding of removal under the Torture Convention, 8 C.F.R. 208.13.

ON BEHALF OF RESPONDENT:

Timothy Devane, Esquire
Law Offices of Madeo and Fasano
299 Broadway
Suite 810
New York, New York 10007

ON BEHALF OF SERVICE:

Wendy Liefer
Assistant District Counsel
United States Department of Justice
Immigration and Naturalization Service
26 Federal Plaza, 12th Floor
New York, New York 10278

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 24-year-old single male, native and citizen of China, who entered the United States at or near Los Angeles, California on or about September 9, 2000. According to the NTA, he was not admitted or paroled after inspection by an Immigration officer.

Thereafter, the Immigration and Naturalization Service issued and served on the respondent an NTA, which is a Notice to Appear in removal proceedings under Section 240 of the Immigration and Nationality Act. *See* Exhibit 1 of the record. That document is dated September 11, 2000 and served on the respondent the same date. *See* Exhibit 1, page two in the record.

At a previously calendared hearing before this Court, the respondent, through counsel, admitted allegations 1 through 4, and conceded removal under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. Based upon respondent's admissions and concessions to the charges contained in the I-862, the Court finds by clear and convincing evidence grounds to remove the respondent from the United States. *See Woodby v. INS*, 385 U.S. 276 (1966); Section 240(c)(3)(A).

In this relief from removal, the respondent has requested political asylum, withholding of removal, withholding of removal under the Torture Convention, Sections 208, 243(b)(3) and 8 C.F.R. 208.13.

The following documents were marked and entered into the record as Exhibits. Exhibit 1, I-862. Exhibit 2, the I-589, Exhibit 3, the notice of filing of background material. Exhibit 4, notice of filing no. 2, background documents from China and background materials, sub-parts A

through G. Exhibit 5, *Profile of Asylum Claims and Country Conditions* in China.

In order to be eligible for asylum in the United States, the respondent must establish either past persecution or a well-founded fear of persecution. *See* Section 101(a)(42)(A) of the Act; *Matter of Chen*, Int. Dec. 3104 (BIA 1989); *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); 8 C.F.R. 208.13(b)(3).

A well-founded fear of persecution is now statutorily defined sa [sic] the Courts has indicated a well-founded fear is established when a reasonable person in his or her circumstances would fear persecution on account of race, religion, nationality, membership in a particular social group or political opinion. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *see also INS v. Cardoza-Fonseca*, 480 U.S. at 440 (1987).

The applicant for withholding of removal under Section 241(b)(3) bears the evidentiary burden of establishing a clear probability of persecution if returned to the country for which he or she seeks withholding. *INS v. Stevic*, 467 U.S. 407 (1984). In other words, the alien must establish that it is more likely than not his or her life or freedom would be subject to persecution on account of one of the five enumerated grounds in the statute.

The applicant for withholding of removal under the Torture Convention bears the burden of proving that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. *See* 8 C.F.R. 208.16(c)(2).

In the case before the Court, the respondent testified that he was born in the Fujian Province, Fuzhou City,

November 15, 1977. He is age 24, single, and he has no children.

The respondent testified that he arrived in the United States on September 7, 2000, having left China the same day, September 7, 2000 and he came directly to 879 Brooklyn, New York. He further declared that by saying he went to China, Hong Kong, Vietnam, Taiwan and then into the United States.

He testified that his family in China consisted of his father, mother and two sisters. His family in the United States consisted of no one. He testified that all the information contained in his I-589 and supporting documentation was true and correct.

The respondent testified that he was never a member of any political organization or political group, never arrested, convicted or imprisoned and tortured.

The circumstances that led to the respondent coming to the United States in September 2000 were, according to his testimony, "police wanted to arrest me for exposing problems with the election on 9-23-99, for the election of the chief of our village." The respondent testified that he completed his education through high school and his occupation in China was that of a farmer after graduating from high school and he was involved in farming from 1997 until September 1999 when he had the problem with the authorities in China.

He further testified that on the day of the election, he distributed ballots to the public about a local election where two people were running for chief of the village and then he and a friend of his disrupted and encountered those. He stated that the ex-chief of the village asked him

and his friend to distribute ballots to the public. He said there were 5,000 people in the village and there were two candidates.

He stated at the time, the chief of the village, whose name he indicated in the record and the election took place at the Elder Center. He distributed the ballots and calculated the votes and gave the election results. He said there was 4,315 votes for Jiang Ituan; 1,680 votes for Chen Am Chum 25 votes that were considered invalid.

The respondent testified he placed the election results in an envelope adn [sic] gave it to the chief of the town and then the next day, he saw the results posted on the ntoice [sic] board that the individual Chen Am Chum had won the election with 1,680 votes. The respondent said he became very angry. He was very surprised. He went to see the chief of his town. He was not there. He spoke to the assistant chief in the town and told this person that teh [sic] person who had been posted as the winner in the election was not teh [sic] true winner. That assistant chief told him he was to stop speaking garbage and he became very angry and said that teh [sic] townspeople were cheated people.

Then he stated that September 25, 1993, after getting together with his friends, he wrote the two letters in Composite Exhibit 4. They decided to post on the notice board on September 25, 1999 the true election results. They posted it, he said, on September 26, 1999. But around October 1, 1999, he said taht [sic] teh [sic] five or six police, according to what his mom told him, had come looking for him. She said taht [sic] his friend Jiang Lian had alreayd [sic] been arrested.

He testified that if he returns to China, he will be arrested because of the election problem and leavign [sic]

China illegally. His mother, he said, told him that Jiang Lian had been arrested.

Cross-examination by Government's counsel is a matter of record.

First, I would deny the application for asylum because the respondent has failed to meet his burden of proof in these proceedings. Finding that, first of all, there's no documents of arrests or summons of the respondent or a warrant for his arrest involving questioning, suspicion or summonizing him for the problem of election fraud in China. There are no documetns [sic] showing that his friend, Jiang Lian was imprisoned for the same problem. There is no one in the family who has provided any affdiavits [sic] concerning this event and there is no one that has had any problem since the respondent left China. In support of that conclusion, teh [sic] Court would cite matter of *Matter of A-E-M-* (citation omitted), where a person's family remains in the hoem [sic] country after the respondent has left without problem, fails to meet his burden of proof for asylum.

Secondly, the respondent has not provided sufficient and convincing evidnece [sic] to support a fear that exists throughout China. In fact, the respondent remained in China, outside of his village, for almost a year before coming to the United States without incident. The respondent has not suffered any past persecution. Future persecution is based on his speculative fear that he woudl [sic] be arresetd [sic] for illegal departure or exposure in election fraud, which is presumably illegal in China. Respondent has not demonstrated that the police are seeking him out to persecution for him any charactistic [sic] or belief that he had, other than exposing election fraud. In fact, there is no evidence, other than his own

testimony, taht [sic] the police were seeking him for anything other than his exposition of the election problem in China. The Court would cite *Matter of R-*, 21 I&N Dec. 621 (BIA 1992) and there is no evidence of past political invovelment [sic] in China by the respondent.

Similarly, very genrealized [sic] statemetns [sic] of fears while most cases may suffice, the Board of Immigration Appeals and relative Circuit decisions ahve [sic] stated this in the past, that the alien must either demonstrate that he actually has been a victim of persecution or that his fear is more than a matter of his own conjecture. *Kashani v. INS*, 547 F.2d 276 (7th Cir. 1997); *Cruz-Lopez v. INS*, 802 F.2d 1518 (4th Cir. 1986); *Perirea-Diaz v. INS*, 551 F.2d 1149 (9th Cir. 1977). *Zamora v. INS*, 543 F.2d 1055, 1058 (2nd Cir. 1976). For those reasons, I would find that the respondent has failed to meet his bruden [sic] of proof.

Secondly, I would deny the application for asylum on the basis of the respondent's credibility. Some minor inconsistencies in his testimony are teh [sic] following.

1. In the I-589, Question 18A, Exhibit 2 in the record, the respondent states in his application that he left China on August 29, 2000. He testified to the Court today that he left China on September 27, 2000 and arrived in the United States on the same day.

2. Another inconsistency in teh [sic] I-589 is that Exhibit 2, Question 7. The respondent testified the date that he went to China, Hong Kong, Vietnam, Taiwan and then to the United States. In the I-589, the respondent testifid [sic] that he went to Hong Kong, stayed there for two days and then went to Vietnam, stayed there for seven days and then came to the United States. There is no information about any trip to Tawain [sic].

The third inconsistency that the Court finsd [sic] a bit perplexing is the letter sent from his friend, Jiang Lian, whcih [sic] were submitted in support of his application, basically repeating the same informatino [sic] that the respondent stated today. Some of which the respondent's friend would have no personal knowledge of. And the respondent explained that away by saying that he told his mtoher [sic] and then his mother told this person, this friend, what happened. An example of teh [sic] infroamtion [sic] that he would have personal knowledge is teh [sic] list of places that he hid and the details of teh [sic] township officers visit.

The next inconsistency and this is wehre [sic] the plausibility of the claim lies actually is that the respondent asked this Court to believe that a high school graduate who worked in the field of farming after he graduated high school from 1997 forward until he had the problem with teh [sic] village police. In a village of 5,000, was designated with his friend to count votes in a village local election. Now this is a person who testified that he had no involvement in any political organization or political group. And yet out of the vilalge [sic] of 5,000 people, he adn [sic] his friend were designated to count and gather and distribute votes for a local election.

That appaers [sic] to be a bit unbeliefvbale [sic] in this Court's view. And in light of the fact that he has no prior history of any political involvement nad [sic] has not been any member of political organization ever in China. And also, having come to the United States in 2000, the incident happened in 1999, that would ahve [sic] been about three yaers [sic] ago when he was 21 years of age.

Lastly, I would deny the application for asylum because the respondent has an option of internal relocation. He lived

for a year in China after the incident without problems, away from his village. There is no idnicatoni [sic] that he could not internally relocate in China. And he remained in China without anything happening to him. Citing the *Matter of K-S-M-*, Int. Dec. 3209 (BIA 1993).

For those reasons, the application for asylum will be denied.

It is further found that the applicaitons for witholding [sic] of removal under Section 241(b)(3) would also be denied, having nto [sic] shown a clear probability of persecution if returend [sic] to China, which requires a higher standard of proof. Having been denied asylum, he has not met the higher standard under Section 241(b)(3).

I would also find that he has nto [sic] met teh [sic] Torture Convention relief for proof, nto [sic] shown a clear probability to be tortured if he goes back to China. He actually fears being prosecuted for illegal departure and being smuggled out of China. And he says that he will spend time in jail under this new law that he says has to do with leaving illegally. So his fear appears to be based upon the prosecution rather than persecution. Since he has not been persecuted or tortured by the acquiescience of a pubilc [sic] official or a person acting in an official capacility [sic], the Court would deny Torture Convention relief under *Matter of S-B-*, Int. Dec. 3430 (BIA 2000).

After considering all the evidence of record, including the reports, teh [sic] *Country Reports* and *Profile*, the Court enters the following orders:

ORDER

IT IS ORDERED that the respondent's aplication [sic] for political asylum and witholding [sic] of removal and witholding [sic] of removal under teh [sic] Torture Convention be, and the same are, hereby, denied.

IT IS FURTHER ORDERED that the respondent shall be removed from the United States to his native country of China on teh [sic] charges contained on the I-862.

CHARLES J. SANDERS
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE CHARLES J. SANDERS in the matter of:

JIANG FEI
A77 287 358
New York, New York

is an accurate, verbatim transcript of the cassette tape as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ Susan Aiello / [Illegible]
Susan Aiello, Transcriber

Free State Reporting, Inc.
1324 Cape St. Claire Road
Annapolis, Maryland 21401
(301) 261-1902

May 22, 2002
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies that a Sony BEC/T-147, 4-channel transcriber or equivalent, as described in Section C, paragraph C.3.3.2 of the contract, was used to transcribe the Record of Proceeding shown in the above paragraph.

U.S. Department of Justice
Immigration and
Naturalization Service

Application for Asylum and for Withholding of Removal

Start Here – Please Type or Print. **Use Black Ink. See The Separate Instruction Pamphlet For Information About Eligibility And How To Complete And File This Application.**

Part A. Information About You

1. Alien Registration Number(s), if any 77-287-358	2. Social Security Number N/A

3. Complete Last Name	4. First Name	5. Middle Name
Jiang	Fei	

6. What Other Names Have You Used? (*Include maiden name and aliases.*) None

7. Residence in the U.S. C/O		Telephone Number (718) 853-7955
Street Number and Name 879 56th St.		Apt. No. 2nd Fl.
City Brooklyn	State NY	Zip Code 11220

8. Mailing Address in the U.S. if Other than Above C/O The Law Offices of Madeo & Fasano		Telephone Number (212) 791-7791
Street Number aned Name 299 Broadway		Apt. No. 810
City New York	State NY	Zip Code 10007

9. Sex ☒ Male ☐ Female	10. Marital Status ☒ Single ☐ Married ☐ Divorced ☐ Widowed
11. Date of Birth (*Mo/Day/Yr*) 11/15/77	12. City and Country of Birth Fuzhou, China

13. Present Nationality (*Citizenship*) China	14. Nationality at Birth China
15. Race, Ethnic or Tribal Group Asian	16. Religion Buddhism

17. *Check each box that applies*

☐ I am not now in removal, deportation or exclusion proceedings.

☐ I was previously in removal, deportation or exclusion proceedings.

☒ I am now in removal, deportation or exclusion proceedings.

☐ I have never been in removal, deportation or exclusion proceedings

18. *Complete 18a through 18g.* a. When did you last leave your country? (*Mo Day Yr*) 8/29/00	d. What was your status when you last entered the U.S.? (*What type of visa did you have, if any?* Illegal
b. When did you last enter the U.S.? (*Mo Day Yr*) 9/7/00	e. What is your I-94 Number? N/A

c. Where did you last enter the U.S.? L.A.	f. What is the expiration date of your authorized stay, if any? N/A

g. have you previously entered the U.S.? ☒ No ☐ Yes If YES, list place, date, and your status for each entry, (*Attach additional sheets as needed.*)

Date _____ Place _____ Status _____
Date _____ Place _____ Status _____
Date _____ Place _____ Status _____

To be Completed by Attorney or Representative, if any
☒ Check if G-28-EOIR-28 is attached showing you represent the applicant. AIS VOLAG or PIN# EX #2
ATTY State License # [Illegible]

19. What is Your Native Language? Chinese	20. Are you fluent in English? ☐ Yes ☒ No	21. What other Languages do you speak fluently? Fuzhou Dialect

22. Have you ever applied to the United States Government or to any other Government(s) for refugee status, asylum, withholding of deportation, or withholding of removal?

☒ No.

☐ I was included in a pending application of my parent(s). However, I am now 21 years old or married so I am filing my own application.

☐ I was included in my spouse's application, but now I wish to file my own application.

☐ Yes (In what country and what was the decision? Also specify the date of the decision.)
Country _____ *Date* _____ *Decision* _____

23. What country issued your last passport or travel document?
N/A

24. Passport #
N/A
Travel Document # N/A

25. Expiration Date

26. Prior address in last country of residence or country in which you fear persecution. (*Last Address, City Town Province, State, Department, and Country*)
191 Cun Qian Li Xinghui Village, Langoi Township, Mawei borough Fuzhou City, Fujian Province, China

27. Provide the following information about your education, beginning with the most recent

Name of School	Type of School	Location	Attended From (*Mo Yr*)	Attended To (*Mo Yr*)
Shangoi Elementary School	Elementary School	Langoi, Fuzhou	9/85	7/91
Langoi Middle School	Junior & Senior High	Langoi, Fuzhou	9/91	7/97

28. Provide the following information about your residences during the last five years. List your present address first. (*Use additional sheets of paper if necessary*)

Number and Street	City	Province or State	Country	Dates From (*Mo Yr*)	Dates To (*Mo Yr*)
870 56 St.	Brooklyn	NY	USA	10/00	Present

In the custody of INS	Lancaster	CA	USA	9/00	10/00
	Fuzhou	Fujian	China	9/99	8/00
194 Cun Qian Li Xinghui Langoi	Fuzhou	Fujian	China	10/95	9/99

29. Provide the following information about your employment during the last five years. List your present employment first. (*Use additional sheets of paper if necessary*)

Name and Address of Employer	Your Occupation	Dates From (Mo Yr)	Dates To (Mo Yr)
Unemployed		10/00	Present
Xinghui Langoi Fuzhou Fujian China	Farmer	8/97	~~9/~~10/99

30. Provide the following information about your parents.

Name	Country and City of Birth	Location
Father: Jiang Ai-Zhong	Fuzhou, China	Fuzhou, China
Mother: Dong Yue-Yun	Fuzhou, China	Fuzhou, China

Part B. Information About Your Spouse and Children.

Your Spouse. ☒ I am not married (*Skip to Part B. Your Children*)

* * *

Part C. Information About Your Claim to Asylum. (*Use Supplement B Form or attach additional sheets as needed to complete your responses to the questions contained in Part C.*)

1. Why are you seeking asylum? Explain in detail what the basis is for your claim. (*Attach additional sheets of paper as needed.*)

   I was responsible for the counting of votes in an election for the Chief of my Village in September 1999. When I found the misconduct of the officials in the election, I exposed the truth to the public my writing a notice and posted it. Later, the police wanted to arrest me for this.

   Please refer to the attachment for more information.

   See additional information in Supplement B to Form I-589

2. Have you or any member of your family ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

   ☒ No. ☐ Yes. If yes, provide a detailed explanation of your or your relatives' involvement with each group and include the name of each organization or group; the dates of membership or affiliation; the purpose of the organization; your duties or your relative' duties or responsibilities in the group or organization; and whether you or your relatives are still active in the group(s). (*Attach additional sheets of paper as needed*)

3. Have you or any member of your family ever been mistreated or threatened by the authorities of your

home country or any other country or by a group or groups that are controlled by the government, or that the government of the country is unable or unwilling to control?

☐ No. ☒ Yes. If YES, was it because of any of the following reasons (*Check each of the following boxes that apply*)

☐ Race	☐ Membership in a particular social group
☐ Religion	
☐ Nationality	☒ Political Opinion

On a separate sheet of paper, specify for each instance, what occurred and the circumstances; the relationship to you of the person involved; the date; the exact location; who it was who took such action against you or your family member(s); his/her position in the government or group; the reason why the incident occurred. Attach documents referring to these incidents, if they are available. (*Attach additional sheets of paper as needed*)

The local police wanted to arrest me because I exposed to the public the truth about the election of the Village Chief.

Please refer to the attachment for more information.

4. Have you or any member of your family ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in your country or any other country, including the United States?

☒ No ☐ Yes, if YES, for each instance, specify what occurred and the circumstances; dates; location; the duration of the detention or imprisonment; the reason(s) for the detention or conviction; the treatment received during the detention or imprisonment; any formal charges that were lodged against you or your relatives; the reason for release; treatment after release. Attach documents referring to

these incidents if they are available. (*Attach additional sheets of paper as needed*)

5. Do you fear being subjected to torture (severe physical or mental pain or suffering, including rape or other sexual abuse) in your home country or any other country if your return?

☒ No ☐ Yes, if YES, explain why (*attach additional sheets of paper as needed*)

I fear being arrested, detained and beaten up for my exposing to the public the truth about the election of the village chief in China.

I fear being sentenced for at least one year according to a new regulation in China, and I fear being beaten up in jail.

6. What do you think would happen to you if you returned to the country from which you claim you would be subjected to persecution? Explain in detail and provide information or documentation to support your statement, if available. (*Attach additional sheets of paper as needed*)

I would be arrested and beaten up for my exposing to the public the truth about the election of the village chief in China.

I would be sentenced for at leat [sic] one year according to a new regulation in China, and I would be beaten up in jail.

7. Describe in detail your trip to the United States from your home country. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren), who are now in the United States, travel through or reside in any other country before entering the United States?

☐ No ☒ Yes, if YES, for each person, identify each country and indicate the length of stay; the person's status while there; the reasons for leaving; whether the person is entitled to return for residence purposes; and if the person applied for refugee status or

for asylum while there; or why he or she did not do so. (*Attach additional sheets of paper as needed*)

I went to Hong Kong and I stayed there for about two days. Then, I went to Vietnam and I stayed there for about seven days. Then, I came to the United States.

I did not have legal status in those places, and I am not entitled to return to those places for residence purposes. I did not apply for refugee status or for asylum there because I simply followed the instructions of the people who arranged for my transportation.

Part D. Additional Information About Your Application For Asylum. (*use Supplement B Form or attach additional sheets as needed to complete your response to the questions contained in Part D.*)

1. Do you, your spouse, or your child(ren) now hold, or have you ever held, permanent residence, other permanent status, or citizenship, in any country other than the one from which you are now claiming asylum?

   ☒ No ☐ Yes, if YES, explain (*Attach additional sheets of paper as needed*)

2. Have you, your spouse, your child(ren), or your parents ever filed for, been processed for, or been granted or denied refugee status or asylum by the United States Government?

   ☒ No ☐ Yes, if YES, explain the decision and what happened to any status you received as a result of that decision. If you have been denied asylum by an Immigration Judge or the Board of Immigration Appeals, please describe any change in country conditions or your own circumstances since the date of the denial that may affect your eligibility for asylum. (*Attach additional sheets of paper as needed*)

3. Have you, your spouse, your child(ren), or your parents ever filed for, been processed for, or been granted or denied refugee status or asylum by any other country?

   ☒ No ☐ Yes, if YES, explain the decision and what happened to any status you received as a result of that decision. (*Attach additional sheets of paper as needed*)

4. Have you, your spouse, or child(ren) ever caused harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion, or ever ordered, assisted, or otherwise participated in such acts?

   ☒ No ☐ Yes, if YES, describe, in detail, each such incident and your own or your spouse's or child(ren)'s involvement. (*Attach additional sheets of paper as needed*)

5. After you left your country of claimed persecution for the reasons you have described, did you return to that country?

   ☒ No ☐ Yes, If YES, describe, in detail, the circumstances of your visit, for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s). (*Attach additional sheets of paper as needed.*)

6. Are you filing the application more than one year after your last arrival in the United States?

   ☒ No ☐ Yes, If YES, explain why you did not file within the first year after you arrived. You should be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question see Part 1 – Filing Instructions, Section V

"Completing the Form," Part D. (*Attach additional sheets of paper as needed.*)

Part E. Signature.

After reading the information on penalties in the instructions, complete and sign below. If someone helped you prepare [illegible] must complete Part F

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. Title 18, United States Code, Section 1546, provides in part. "Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact – shall be fined in accordance with this title or imprisoned not more than five years, or both". I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an Immigration Judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. See INA 208(d)(6) and 8 CFR 208.18.

Signature of Applicant (*The person named in Part A)*

/s/ [Jiang Fei] 10/31/2000

Sign your name so it all appears within the brackets. Date (*Mo Day Yr*)

Print Name: Jiang, Fei

Write your name in your native alphabet: /s/ [Illegible]

Did your spouse, parent or child(ren) assist you in completing this application? ☒ No ☐ Yes (*If YES, list their name(s) and relationship.*)

(*Name*) _____ (*Relationship*) _____

(*Name*) _____ (*Relationship*) _____

Did someone other than you or your spouse, parent or child(ren) prepare this application? ☐ No ☒ Yes (*Complete Part F*)

Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? ☐ No ☒ Yes

Part F. Signature Of Person Preparing Form If Other Than Above. *Sign below.*

I declare that I have prepared this application at the request of the person named in Part E, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant and that the completed application was read to the applicant in his or her native language for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. Section 1324(c).

Signature of Preparer	Print Name	Date (*Mo Day Yr*)
/s/ [Illegible]	Bingfeng Huang	10/31/00

Daytime Telephone Number	Address of Preparer: Street Number and Name
(212) 791-7791	299 Broadway

Apt. No	City	State	Zip Code
810	New York	NY	10007

Part G. To Be Completed At Interview

* * *

Attachment to Form I-589, Part C, Question 1
Statement of Jiang, Fei (A77-287-358)

September 23, 1999 was the day for the election of the Chief of our village. It was the second time for the election of the Chief of the village in Xinghui Village. Earlier, the Village Chief Chen Aichun asked me and Jiang Ailin to send votes to each family. There are about five thousand twenty people in our village, and there were two candidates: one is the present Chief Chen Aichun, and the other was Jiang Aituan. The election took place in the senior center in Xinghui Village. Jiang Ailin and I were asked to take charge of counting the votes. The result was that 3,315 votes for Jiang Aituan, 1,680 votes for Chen Aichun, and 25 votes were invalid. We sealed the result in an envelope and presented it to the Township Chief who was present at the election and oversaw it.

The next morning when I passed the senior center, I saw a notice saying that Chen Aichun was elected as the Chief of the Village. I was surprised. I thought that it might be a

mistake. Immediately, I went to the township government to see the Township Chief. However, he was not there, and only his deputy was available. I then told him the result of the election was wrong, but he said that the Township Chief had told him that was the correct result. I said that I was one of the statisticians, and I knew the result was that Jiang Aituan had been elected as the Village Chief. He said that I was making a rumor, and he asked me to be careful about my words, and then he asked me to leave his office.

I was very offended and thought that those officials were cheating village people. I talked to Jiang Ailin about this. He was also upset. After a discussion, we decided that I would write a notice to let the village people know the truth. I wrote the result of the election in a notice and I finished it on the night of September 25, 1999. At Around 1:00 a.m. the next morning, Jiang Ailin and I secretly posted it to the bulletin board outside of the senior center. Then, we went into hiding.

On October 1, 1999 when I was hiding in my uncle's home in Fuzhou, my mother called me and told me that five or six police went to my home to arrest me. She also told me that Jiang Ailin had been arrested, according to his family. My mother asked me to remain in hiding there. Later, the police kept going to my home to arrest me. They also went to my uncle's home in Xiaqi Village, Langqi Township, my aunts' homes in Jinisha Village and Guotou Village. Given the situation, in July 2000, my mother told my uncle that I could no longer stay there, and she asked him to arrange for me to leave China. On August 29, 2000, I left China. On September 7, 2000, I arrived in the United States.